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Amendments to the Drawings

Please add the following replacement drawings, labeled Figures 12A, 12B and 12C, to the application.

Remarks

Information Disclosure Statement

Applicant is resubmitting an IDS with the response to this Office action. Applicant, in the previous office action unintentionally and mistakenly filled out the previously submitted IDS. In particular, applicant listed "Jp 14652 (L'Oreal)", as a Foreign Patent Document, when, in actuality this is a Foreign priority date for France. Attached hereto, is a second IDS with the appropriate corrections entered.

Election/Restriction

In a telephone conversation with the Examiner, I, Thomas A. O'Rourke, made a provisional election with traverse to prosecute the invention of the Species 1, claims 2-15, 17-28, and 31-47.

Drawings

Applicant has attached replacement drawings, labeled Figures 12A, 12B and 12C.

Claim Objections

Applicant has amended claims 15, 33, 41 and 43 so as to correct any informalities.

Claim Rejections

35 U.S.C. §112

The Examiner has rejected claims 17-19 and 33-35 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Regarding claim 17, applicant has amended this claim so that it now depends on claim

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32. In addition, applicant has amended this claim so as to remove any improper antecedent basis issues.

Regarding claim 33, applicant has amended this claim so as provide proper antecedent basis for the limitation “the drive means”. As to the double introductory recitation of “a screw means”, applicant has amended this claim so as to remove any ambiguities as to whether there is one or two screw means. In particular, applicant has added the word “said” before “screw means”.

Double Patenting

The Examiner has rejected claim 45 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claim 26 of USPN 6607323. In addition, the Examiner has also rejected claims 15, 17-19, 31-35 and 44 on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 22-24 of USPN 6607323 in view of USPN 5879095 (Gueret). Attached hereto, are two terminal disclaimers in compliance with 37 CFR 1.321 (c) or 1.321(d), which may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with the application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Since both patents are commonly owned by Cosmetic Concepts, the two terminal disclaimers should now render the Examiners rejections moot.

35 USC §102

The Examiner has rejected claims 15, 17-19, 31-35, 43, 46 and 47 under 35 U.S.C. 1-2

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(b) as being anticipated by Gaebel. Applicant has amended, independent claims 31, 32, 43, 46 and 47, to further distinguish the present invention than the above cited prior art. In particular, regarding claims 31, 32 and 43 applicant has further limited the driving member in these claims so as to include "...said driving member having a product contact surface that contacts the inside surface of said reservoir over a substantial portion of its surface..." The Gaebel disclosure does not teach or suggest of such a configuration, as such claims 31, 32 and 43 and any claims depending therefrom should be in a condition for allowance.

Applicant has amended, independent claims 46 and 47, to further distinguish the present invention from the above cited prior art. In particular, applicant has added the further limitation of "wherein a user can view the color of the product in said reservoir through said tip." The Gaebel disclosure does not teach or suggest of such a configuration, as such claims 46 and 47 any claims depending therefrom should be in a condition for allowance.

35 USC § 103

The following are obviousness rejections were averred by the Examiner:

The Examiner has rejected to claims 2-5, 15, 17, 18, 20, 24, 31-34, 36, 40 and 44, under 35 U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of USPN 5842802 (Lang);

The Examiner has also rejected claims 6-14 under 35 U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of USPN 5842802 (Lang) as applied to claim 31 and further in view of Trabottoni;

Furthermore, the Examiner has rejected claims 21-23, 25, 26, 37-39, 41 and 42 under 35

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U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of USPN 5842802 (Lang) as applied to claim 31 above and further in view of Kapustin;

Moreover, the Examiner has rejected claim 45 under 35 U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of Kapustin and in view of USPN 5842802 (Lang);

In addition, the Examiner has rejected claim 27 under 35 U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of USPN 5842802 (Lang) as applied to claim 3 supra and further in view of Green.

Finally, the Examiner has rejected claim 28 under 35 U.S.C. 103(a) as being unpatentable over USPN 5879095 (Gueret) in view of USPN 5842802 (Lang) as applied to claim 27 supra and further in view of Penn.

According to MPEP 2143.03 “to establish prima facie obviousness of claimed invention, all the claim limitations must be taught or suggested by the prior art.” Section 2143.03 further states that “if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious”.

As stated above the applicant has amended, independent claims 31, 32, and 43 to further distinguish the present invention from the above cited prior art. In particular, applicant has further limited the driving member in these claims so as to include “...said driving member having a product contact surface that contacts the inside surface of said reservoir over a substantial portion of its surface...” The Gueret disclosure does not teach or suggest of such a configuration, as such claims 31, 32 and 43 and any claims depending therefrom should be in a condition for allowance.

In addition, the applicant has amended, independent claims 44 and 45 to further distinguish the present invention from the above cited prior art. In particular, applicant has further limited these claims so as to include “wherein a user can view the color of the product in said reservoir through said tip.” Neither Gueret, Lang nor Kapustin, alone or any combination thereof, teach or suggest of such a configuration, as such claims 44 and 45 and any claims depending therefrom should be in a condition for allowance.

Regarding new claims 49 and 50, applicant has combined old claims 44 and 45, respectively, and added the additional limitation “a driving member having a product contact surface that contacts the inside surface of said reservoir over a substantial portion of its surface.” The above cited prior art or any combination thereof does not teach or suggest of such a configuration and as such these claims should be in condition for allowance.

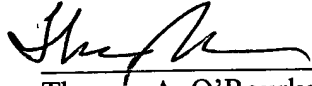
Regarding new claims 51 and 52, applicant has combined old claims 46 and 47, respectively, and added the additional limitation “a driving member having a product contact surface that contacts the inside surface of said reservoir over a substantial portion of its surface.” The above cited prior art or any combination thereof does not teach or suggest of such a configuration and as such these claims should be in condition for allowance.

CONCLUSION

For the foregoing reasons, applicant’s claims are patentable over the cited prior art and the application should be in condition for allowance.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thom O'Rourke', written over a horizontal line.

Thomas A. O'Rourke

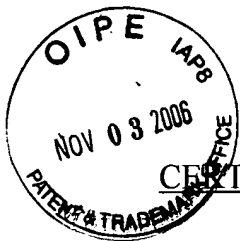
Reg. No.: 27,665

BODNER & O'ROURKE, L.L.P.

425 Broadhollow Road

Melville, New York 11747

(631) 249-7500



CERTIFICATE OF MAILING

I hereby certify that the foregoing documents and fees were mailed by first class mail, postage prepaid, in an envelope addressed to the Hon. Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, this 1st day of November, 2006.


Thomas A. O'Rourke